

ASSEMBLY BILL

No. 476

Introduced by Assembly Member Baugh

February 18, 1999

An act to amend Sections 1166, 1305, and 1308 of the Penal Code, relating to bail.

LEGISLATIVE COUNSEL'S DIGEST

AB 476, as introduced, Baugh. Bail: procedure.

(1) Existing law requires that if a verdict is rendered against a defendant who is out on bail, he or she may be remanded to the proper officer to await the judgment of the court.

This bill would require that if a verdict is rendered against a defendant who is out on bail, the defendant be remanded to the proper officer to await the judgment of the court unless the court finds by clear and convincing evidence that the defendant is not a flight risk. Upon this finding, the court would be authorized to allow the defendant to remain out on bail. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(2) Under existing law, the court is authorized to grant a motion to vacate a forfeiture of bail only if the motion is made within a 180-day period and is heard within 30 days of the expiration of that 180-day period. Existing law also authorizes a surety or depositor of bail to file a motion, based upon good cause, to extend the 180-day period of time, not exceeding 180-days from its order.

This bill would provide instead, that a motion to vacate a forfeiture of bail that is filed within the 180-day period, may be heard within 30 days of the expiration of that 180-day period. The court would be authorized to extend the 30-day period upon a showing of good cause and to require that the moving party provide 10 days prior notice to the applicable prosecuting agency as a condition to granting the motion.

(3) Existing law bars a court or magistrate from accepting any person or corporation as a surety on bail if any summary judgment against that person or corporation remains unpaid after the expiration of 20 days following service of notice of the entry of the summary judgment, unless an action or proceeding is initiated to determine the validity of the order of forfeiture or summary judgment.

This bill would instead, authorize the district attorney or county counsel to petition the court for an order barring that person or corporation from posting further bail bonds if any summary judgment against that person or corporation remains unpaid after the expiration of the above-mentioned 20-day period. The district attorney or county counsel would be required to provide the bail surety with 5 days prior notice as a condition precedent to the granting of the order.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1166 of the Penal Code is
2 amended to read:



1 1166. If a general verdict is rendered against the
2 defendant, or a special verdict is given, he *or she* must be
3 remanded, if in custody, or if on bail he ~~may~~ *or she shall*
4 be committed to the proper officer of the county to await
5 the judgment of the court upon the verdict, *unless the*
6 *court finds by clear and convincing evidence that the*
7 *defendant is not a flight risk, and then the court may allow*
8 *the defendant to remain out on bail.* When committed, his
9 *or her* bail is exonerated, or if money is deposited instead
10 of bail it must be refunded to the defendant or to the
11 person or persons found by the court to have deposited
12 said money on behalf of said defendant.

13 SEC. 2. Section 1305 of the Penal Code is amended to
14 read:

15 1305. (a) A court shall in open court declare forfeited
16 the undertaking of bail or the money or property
17 deposited as bail if, without sufficient excuse, a defendant
18 fails to appear for any of the following:

19 (1) Arraignment.

20 (2) Trial.

21 (3) Judgment.

22 (4) Any other occasion prior to the pronouncement of
23 judgment if the defendant's presence in court is lawfully
24 required.

25 (5) To surrender himself or herself in execution of the
26 judgment after appeal.

27 However, the court shall not have jurisdiction to
28 declare a forfeiture and the bail shall be released of all
29 obligations under the bond if the case is dismissed or if no
30 complaint is filed within 15 days from the date of
31 arraignment.

32 (b) If the amount of the bond or money or property
33 deposited exceeds four hundred dollars (\$400), the clerk
34 of the court shall, within 30 days of the forfeiture, mail
35 notice of the forfeiture to the surety or the depositor of
36 money posted instead of bail. At the same time, the court
37 shall mail a copy of the forfeiture notice to the bail agent
38 whose name appears on the bond. The clerk shall also
39 execute a certificate of mailing of the forfeiture notice
40 and shall place the certificate in the court's file. If the

1 notice of forfeiture is required to be mailed pursuant to
2 this section, the 180-day period provided for in this section
3 shall be extended by a period of five days to allow for the
4 mailing.

5 If the surety is an authorized corporate surety, and if
6 the bond plainly displays the mailing address of the
7 corporate surety and the bail agent, then notice of the
8 forfeiture shall be mailed to the surety at that address and
9 to the bail agent, and mailing alone to the surety or the
10 bail agent shall not constitute compliance with this
11 section.

12 The surety or depositor shall be released of all
13 obligations under the bond if any of the following
14 conditions apply:

15 (1) The clerk fails to mail the notice of forfeiture in
16 accordance with this section within 30 days after the entry
17 of the forfeiture.

18 (2) The clerk fails to mail the notice of forfeiture to the
19 surety at the address printed on the bond.

20 (3) The clerk fails to mail a copy of the notice of
21 forfeiture to the bail agent at the address shown on the
22 bond.

23 (c) (1) If the defendant appears either voluntarily or
24 in custody after surrender or arrest in court within 180
25 days of the date of forfeiture or within 180 days of the date
26 of mailing of the notice if the notice is required under
27 subdivision (b), the court shall, on its own motion at the
28 time the defendant first appears in court on the case in
29 which the forfeiture was entered, direct the order of
30 forfeiture to be vacated and the bond exonerated. If the
31 court fails to so act on its own motion, then the surety's or
32 depositor's obligations under the bond shall be
33 immediately vacated and the bond exonerated. An order
34 vacating the forfeiture and exonerating the bond may be
35 made on terms that are just and do not exceed the terms
36 imposed in similar situations with respect to other forms
37 of pretrial release.

38 (2) If, within the county where the case is located, the
39 defendant is surrendered to custody by the bail or is
40 arrested in the underlying case within the 180-day period,

1 and is subsequently released from custody prior to an
2 appearance in court, the court shall, on its own motion,
3 direct the order of forfeiture to be vacated and the bond
4 exonerated. If the court fails to so act on its own motion,
5 then the surety's or depositor's obligations under the
6 bond shall be immediately vacated and the bond
7 exonerated. An order vacating the forfeiture and
8 exonerating the bond may be made on terms that are just
9 and do not exceed the terms imposed in similar situations
10 with respect to other forms of pretrial release.

11 (3) If, outside the county where the case is located, the
12 defendant is surrendered to custody by the bail or is
13 arrested in the underlying case within the 180-day period,
14 the court shall vacate the forfeiture and exonerate the
15 bail.

16 ~~(4) Except as provided in paragraphs (1) and (2), the~~
17 ~~court, in its discretion, may require that the bail provide~~
18 ~~10 days' prior notice to the applicable prosecuting~~
19 ~~agency, as a condition precedent to vacating the~~
20 ~~forfeiture. The notice may be given by the surety insurer,~~
21 ~~the bail agent, the surety, or the depositor of money or~~
22 ~~property, any of whom may appear in person or through~~
23 ~~an attorney. A motion filed in a timely manner within the~~
24 ~~180-day period may be heard within 30 days of the~~
25 ~~expiration of the 180-day period. The court may extend~~
26 ~~the 30-day period upon a showing of good cause.~~

27 In lieu of exonerating the bond, the court may order the
28 bail reinstated and the defendant released on the same
29 bond if both of the following conditions are met:

30 (A) The bail is given prior notice of the reinstatement.

31 (B) The bail has not surrendered the defendant.

32 (d) In the case of a permanent disability, the court
33 shall direct the order of forfeiture to be vacated and the
34 bail or money or property deposited as bail exonerated if,
35 within 180 days of the date of forfeiture or within 180 days
36 of the date of mailing of the notice if notice is required
37 under subdivision (b), it is made apparent to the
38 satisfaction of the court that both of the following
39 conditions are met:

1 (1) The defendant is deceased or otherwise
2 permanently unable to appear in the court due to illness,
3 insanity, or detention by military or civil authorities.

4 (2) The absence of the defendant is without the
5 connivance of the bail.

6 (e) In the case of a temporary disability, the court shall
7 order the tolling of the 180-day period provided in this
8 section during the period of temporary disability,
9 provided that it appears to the satisfaction of the court
10 that the following conditions are met:

11 (1) The defendant is temporarily disabled by reason of
12 illness, insanity, or detention by military or civil
13 authorities.

14 (2) Based upon the temporary disability, the
15 defendant is unable to appear in court during the
16 remainder of the 180-day period.

17 (3) The absence of the defendant is without the
18 connivance of the bail.

19 The period of the tolling shall be extended for a
20 reasonable period of time, at the discretion of the court,
21 after the cessation of the disability to allow for the return
22 of the defendant to the jurisdiction of the court.

23 (f) In all cases where a defendant is in custody beyond
24 the jurisdiction of the court that ordered the bail
25 forfeited, and the prosecuting agency elects not to seek
26 extradition after being informed of the location of the
27 defendant, the court shall vacate the forfeiture and
28 exonerate the bond on terms that are just and do not
29 exceed the terms imposed in similar situations with
30 respect to other forms of pretrial release.

31 (g) In all cases of forfeiture where a defendant is not
32 in custody and is beyond the jurisdiction of the state, is
33 temporarily detained, by the bail agent, in the presence
34 of a local law enforcement officer of the jurisdiction in
35 which the defendant is located, and is positively
36 identified by that law enforcement officer as the wanted
37 defendant in an affidavit signed under penalty of perjury,
38 and the prosecuting agency elects not to seek extradition
39 after being informed of the location of the defendant, the
40 court shall vacate the forfeiture and exonerate the bond

1 on terms that are just and do not exceed the terms
2 imposed in similar situations with respect to other forms
3 of pretrial release.

4 (h) As used in this section, “arrest” includes a hold
5 placed on the defendant in the underlying case while he
6 or she is in custody on other charges.

7 (i) *A motion filed in a timely manner within the*
8 *180-day period may be heard within 30 days of the*
9 *expiration of the 180-day period. The court may extend*
10 *the 30-day period upon a showing of good cause. The*
11 *motion may be made by the surety insurer, the bail agent,*
12 *the surety, or the depositor of money or property, any of*
13 *whom may appear in person or through an attorney. The*
14 *court, in its discretion, may require that the moving party*
15 *provide 10 days prior notice to the applicable prosecuting*
16 *agency, as a condition precedent to granting the motion.*

17 SEC. 3. Section 1305.4 of the Penal Code is amended
18 to read:

19 1305.4. Notwithstanding Section 1305, the surety or
20 depositor may file a motion, based upon good cause, for
21 an order extending the 180-day period provided in that
22 section. The motion shall include a declaration or affidavit
23 that states the reasons showing good cause to extend that
24 period.—~~The motion shall be duly served on the~~
25 ~~prosecuting agency at least 10 days prior to the hearing~~
26 ~~date.~~ The court, upon a hearing and a showing of good
27 cause, may order the period extended to a time not
28 exceeding 180 days from its order. *A motion may be filed*
29 *and calendared as provided in subdivision (i) of Section*
30 *1305.*

31 SEC. 4. Section 1308 of the Penal Code is amended to
32 read:

33 1308. (a) No court or magistrate shall accept any
34 person or corporation as surety on bail if ~~any summary~~
35 ~~judgment against that person or corporation entered~~
36 ~~pursuant to Section 1306 remains unpaid after the~~
37 ~~expiration of 20 days after service of notice of the entry~~
38 ~~of the summary judgment, provided that, if during the 20~~
39 ~~days an action or proceeding available at law is initiated~~
40 ~~to determine the validity of the order of forfeiture or~~

~~1 summary judgment rendered on it, this section shall be
2 rendered inoperative until that action or proceeding has
3 finally been determined, provided that, if an appeal is
4 taken, an appeal bond is posted in compliance with
5 Section 917.1 of the Code of Civil Procedure. any
6 summary judgment against a person or corporation
7 entered pursuant to Section 1306 remains unpaid after
8 the expiration of 20 days after service of notice of entry
9 of judgment, and the district attorney or county counsel
10 petitions the court for an order barring that person or
11 corporation from posting further bail bonds in that
12 county. The district attorney or county counsel shall
13 provide the person or corporation against whom
14 judgment is entered, five days prior notice as a condition
15 precedent to the granting of the order. The court shall not
16 prevent any person or corporation from posting bail if an
17 action or proceeding available at law has been initiated
18 to determine the validity of the order of forfeiture or
19 summary judgment rendered on it, until that action or
20 proceeding has finally been determined. If an appeal is
21 taken, an appeal bond shall be posted in compliance with
22 Section 917.1 of the Code of Civil Procedure.~~

23 (b) The clerk of the court in which the judgment is
24 rendered shall serve notice of the entry of judgment upon
25 the judgment debtor within five days after the date of the
26 entry of the summary judgment.

27 SEC. 5. Notwithstanding Section 17610 of the
28 Government Code, if the Commission on State Mandates
29 determines that this act contains costs mandated by the
30 state, reimbursement to local agencies and school
31 districts for those costs shall be made pursuant to Part 7
32 (commencing with Section 17500) of Division 4 of Title
33 2 of the Government Code. If the statewide cost of the
34 claim for reimbursement does not exceed one million
35 dollars (\$1,000,000), reimbursement shall be made from
36 the State Mandates Claims Fund.